CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	Force	☐ Discourt.	□ U.S.
Sara Asselman		Squad #4	202200580	✓ Abuse	☐ O.L.	☐ Injury
Sara 7 SSCIIIaii		Squad #4	202200300	/ House		mjury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Tuesday, 01/25/2022 11:20 PM		Mapes Avenue and East	st 181st Street	48	7/25/2023	7/25/2023
Date/Time CV Reported		CV Reported At:	How CV Reported	l: Date/Time	e Received at CCI	RB
Tue, 01/25/2022 11:45 PM		IAB	Phone	Fri, 01/28	/2022 11:13 AM	
Complainant/Victim	Туре	Home Addre	ess	,		
Subject Officer(s)	Shield	TaxID	Command			
1. PO Kieran Brennan	30990	965958	PBBX SU PST			
2. PO Anthony Saline	12924	962081	PBBX SU PST			
3. SGT DS Erik Duran	01423	948476	NARCBBX			
Officer(s)	Allegation	on		Inv	estigator Recon	nmendation
A.PO Kieran Brennan	Abuse: F	Police Officer Kieran Bro	ennan stopped § 87(2)(t	b)		
B.PO Anthony Saline		Police Officer Anthony S				
C.SGT DS Erik Duran	Abuse: Sergeant Erik Duran stopped § 87(2)(b)					
D.PO Kieran Brennan	§ 87(2)(a) CVI	₹ § 50-b				
E.PO Kieran Brennan	Abuse: Police Officer Kieran Brennan frisked § 87(2)(b)					
F.PO Kieran Brennan	Abuse: Police Officer Kieran Brennan searched \$87(2)(b)					
G.PO Kieran Brennan	Abuse: F	Police Officer Kieran Bress 87(2)(b)	ennan refused to pro	ovide his		
H.PO Anthony Saline	Abuse: Police Officer Anthony Saline refused to provide his name to \$87(2)(b)					
I.SGT DS Erik Duran	Abuse: S § 87(2)(b)	Sergeant Erik Duran refu	sed to provide his n	ame to		
J.PO Kieran Brennan		Police Officer Kieran Bro umber to \$87(2)(b)	ennan refused to pro	ovide his		
K.PO Anthony Saline		Police Officer Anthony Sumber to \$\frac{\}{8}\frac{87(2)(b)}{2}}	saline refused to pro	ovide his		
L.SGT DS Erik Duran	Abuse: S number t	Sergeant Erik Duran refu to § 87(2)(b)	sed to provide his s	hield		
M.PO Kieran Brennan	Abuse: Police Officer Kieran Brennan failed to provide with a business card.					
N.PO Anthony Saline	Abuse: Police Officer Anthony Saline failed to provide with a business card.					
O.SGT DS Erik Duran		Sergeant Erik Duran faile usiness card.	ed to provide § 87(2)(b)			

Case Summary

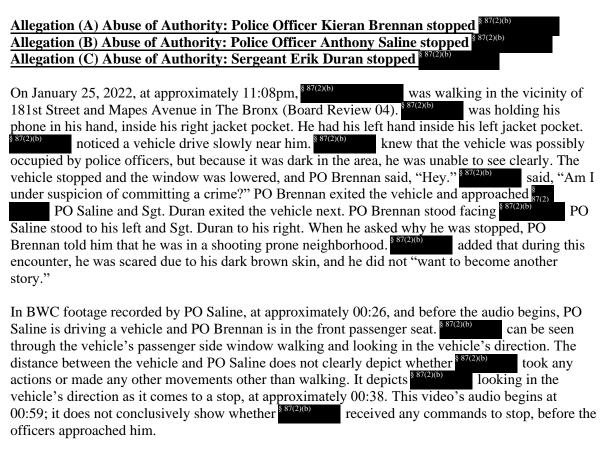
This complaint was filed on January 25, 2022, at IAB via telephone. The reference log number is #22-1995.

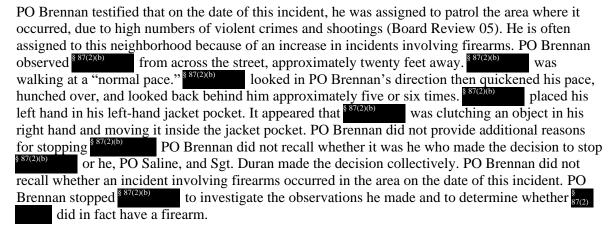
On January 25, 2022, PO Kieran Brennar	n, PO Anthony Saline, Se	rgeant Erik Dura	an of Patrol
Borough Bronx stopped § 87(2)(b)	near the intersection of	181st Street and	Mapes Avenue
in The Bronx (Allegation A: Abuse of A	authority, § 87(2)(g)	Allegation B:	Abuse of
Authority, § 87(2)(g) Allegation C	: Abuse of Authority, 800	$\Gamma^{(2)(g)}$	O Brennan
placed his hand between s par	nts and belt area (Allegati		Authority,
	pockets of his jacket (Al	legation E: Abu	ise of Authority,
and searched his pocket (Allegation F: Abuse of A	Authority, $\S^{87(2)(g)}$	PC
Brennan, PO Saline, and Sgt. Duran then	refused to provide their r	names and shield	numbers to 87(2)
(Allegations G through L: Abuse	e of Authority, § 87(2)(g)	§ 87(2)(b)	did not
obtain a RTKA business card from PO Sa	aline, PO Brennan, or Sgt	. Duran, (Allega	tions M through
O: Abuse of Authority, § 87(2)(g)			

This incident resulted in no arrests or summonses being issued. Stop Report #2022-048-000033 was prepared by PO Brennan, in relation to this incident (Board Review 17).

The CCRB obtained BWC footage of this incident (Board Review 01, 02, 03).

Findings and Recommendations





PO Saline testified that he, PO Brennan, and Sgt. Duran observed from inside their unmarked vehicle, looking back over his shoulder (Board Review 06). PO Saline looked in the vehicle's direction, quickened his pace and frequently looked back over his shoulder. After they drove close to him, grasped an object inside his left jacket pocket. PO Saline testified that it was PO Brennan who saw this object and was unable to describe it. PO Saline did not recall which of the officers made the decision to stop

Sgt. Duran said to the CCRB that he was supervising PO Brennan and PO Saline from the backseat of an unmarked NYPD vehicle, near the location of this incident, which is known to have a high level of violence and shootings (Board review 07). Typically, he looks for individuals who change their behavior when noticing the police and individuals with bulges that look like firearms. Sgt. Duran did not recall which of the officers inside the vehicle saw quicken his pace when he noticed the unmarked vehicle. Sgt. Duran added that although the vehicle was unmarked, could have recognized its occupants as NYPD officers because the windows were down, and their NYPD uniforms were visible. Sc2(2)(b) had an object in his pocket which created a bulge. Sgt. Duran did not recall what shape the bulge was, but he compared it to his own flashlight, which is a narrow cylinder. grasped this object inside his pocket when he noticed the officers. The officers made the decision to stop collectively.

<u>People v. DeBour</u>, 40 N.Y.2d 210 (1976), states that officers must have reasonable suspicion that a person has committed, is committing or is about to commit a felony or misdemeanor in order to stop that person (Board Review 08).

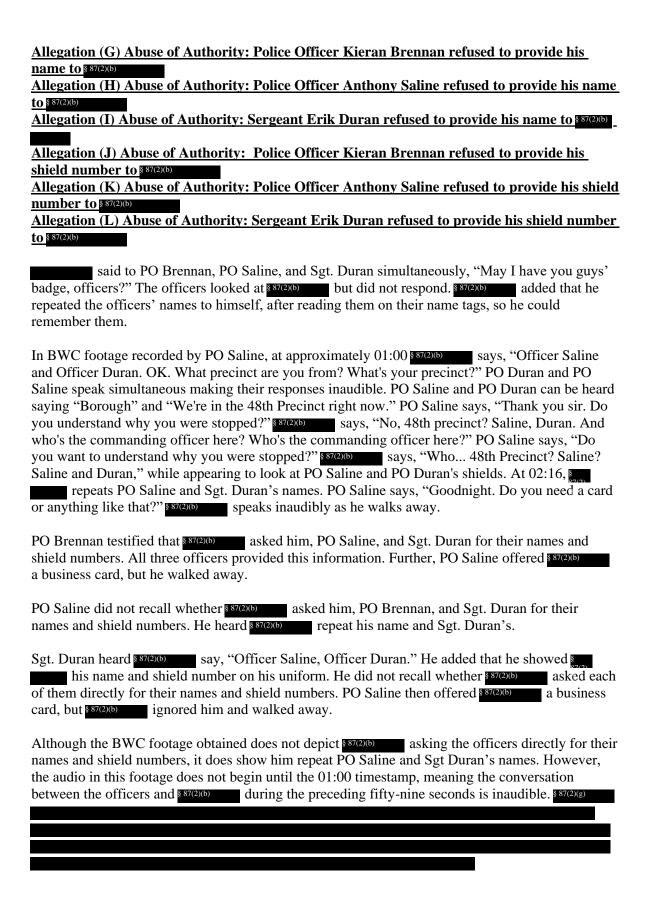
New York v. Hollman, 79 N.Y.2d 181 (1992), states that "It is certainly unsettling to be approached by a police officer" and "that a reasonable person would [...] be taken aback by such a request." Merely acting suspiciously does not give rise to a more intrusive police inquiry based on the four-tiered DeBour method (Board review 09).

<u>People v. Powell</u>, 246 A.d.2d 366 (1998), states that behaviors that are readily susceptible to an innocent interpretation, may not generate a founded suspicion of criminality. Additionally, that this may have been a high-crime area does not validate a search since no other objective indicia of criminality existed to supply the requisite reasonable suspicion for the forcible stop and frisk (Board Review 10).

<u>People v. Jones</u>, 164 A.D.3d 1363 (2018), states that a bulging jacket pocket is not indicative of criminality, as a pocket bulge, in contrast to a waistband bulge, could be caused by an innocuous object (Board review 11).

Although PO Brennan, PO Saline, and Sgt. Duran all testified that \$\frac{887(2)(6)}{2}\$ quickened his pace, placed his hands in his pockets and looked behind him repeatedly, the BWC evidence obtained by the CCRB did not clearly depict \$\frac{887(2)(6)}{2}\$ taking these actions. They each testified that the area where \$\frac{887(2)(6)}{2}\$ was walking had a high level of firearm-related incidents. Additionally, Sgt. Duran testified that he saw a bulge in \$\frac{887(2)(6)}{2}\$ s jacket pocket but the description which he provided is insufficient to determine whether it resembled a firearm or any other weapon. \$\frac{887(2)(6)}{2}\$
§ 87(2)(a) CVR § 50-b
Allegation (E) Abuse of Authority: Police Officer Kieran Brennan frisked 887(2)(b) Allegation (F) Abuse of Authority: Police Officer Kieran Brennan searched 887(2)(b)
§ 87(2)(a) CVR § 50-b
PO Brennan then patted down server is front pants pockets and reached inside his left and right jacket front pockets, with his left and right hands, respectively.
In BWC footage recorded by PO Brennan, at 00:51, PO Brannan extends his right hand between s left arm and his torso and takes hold of striction s wrist and pulls his hand out of his pocket. PO Brennan's hand does not appear to enter striction s pocket. Striction s hand does not appear to be holding any objects. Striction is holding a cellphone in his right hand. PO Brennan then briefly lifts the portion of striction s jacket near the front zipper. Striction contains the striction of striction of striction s jacket near the front zipper.
. It does not depict whether was given verbal commands to remove his hands from his pockets.
The BWC footage recorded by PO Saline does not depict an angle that shows the frisk actions taken by PO Brennan.
PO Brennan approached \$87(2)(6) and immediately removed his left hand from his left pocket by grasping his forearm. He also patted the fronts of his jacket pockets and the front waistband area. PO Brennan did not pat down or enter any additional areas of \$87(2)(6) CVR \$50-5
PO Saline testified that was given multiple commands to remove his hand from his pocket, with which he did not comply. PO Brennan removed sar(2)(6) s hand from his jacket pocket and frisked the area by patting it from the outside. He denied seeing PO Brennan enter any

of § 87(2)(b) s pockets. § 87(2)(a) CVR § 50-b
During this stop, Sgt. Duran paid special attention to the ground near where \$87(2)(b) walked because he may have dropped possessions after noticing police officers. Sgt. Duran then heard PO Brennan say to \$87(2)(b) "Stop pulling away from me." He then walked towards \$87(2)(b) because PO Brennan's statement made him fear for his, PO Brennan's, and PO Saline's safety. Sgt. Duran saw PO Brennan remove \$87(2)(b) s hand from, then frisk, his pocket. Sgt. Duran did not recall if PO Brennan took any other action to make sure that \$87(2)(b) did not have any weapons. Sgt. Duran did not frisk of search \$87(2)(b) \$87(2)(a) CVR \$50-b
People v. DeBour, 40 N.Y.2d 210 (1976), states that officers may frisk a stopped individual if they reasonably suspect that the person is armed. However, it also states that innocuous behavior alone does not generate a founded, reasonable suspicion that a crime is at hand.
People v. Howard, 147 A.D.2d 177 (1989), states that officers may frisk an individual when they reasonably suspect that they are in danger of physical injury by virtue of the detained person being armed. It clarifies that a bulging jacket pocket is not sufficient as a basis for a frisk or search for a gun (Board Review 12).
§ 87(2)(a) CVR § 50-b
It is undisputed that PO Brennan frisked [887(2)(b)] s front jacket pockets.
It is undisputed that PO Brennan frisked \$87(2)(b) s front jacket pockets.
Only Sgt. Duran testified to the CCRB that he feared for his safety, because he heard PO Brennan say to to stop pulling away from him and Sgt. Duran did not provide any additional reasons for
Only Sgt. Duran testified to the CCRB that he feared for his safety, because he heard PO Brennan say to to stop pulling away from him and Sgt. Duran did not provide any additional reasons for
Only Sgt. Duran testified to the CCRB that he feared for his safety, because he heard PO Brennan say to to stop pulling away from him and Sgt. Duran did not provide any additional reasons for fearing for his and his team's safety. **S7(2)(2)* .



Allegation (M) Abuse of Authority: Police Officer Kieran Brennan failed to provide \$87(2)(6) with a business card. Allegation (N) Abuse of Authority: Police Officer Anthony Saline failed to provide \$87(2)(6) with a business card. Allegation (O) Abuse of Authority: Sergeant Erik Duran failed to provide 887(2)(b) with a business card. While providing the information listed in the CCRB Confidential Witness Information Sheet, said he did not receive a business card from either PO Saline, PO Brennan, or Sgt. Duran (Board Review 18). The BWC footage recorded by PO Saline shows that \$87(2)(b) walked away from PO Brennan, PO Saline, and Sgt. Duran before obtaining a business card from any of the three officers (Board Review 01, 02). The same footage shows that at 02:19, PO Saline asks \$87(2)(b) "Do you need a card or anything like that?" § 87(2)(b) s response is inaudible, and he appears to walk away. PO Saline testified that during this incident, he offered 87(2)(b) a business card, but 87(2)(b) did not take it. Sgt. Duran's testimony was materially similar to PO Saline's. Administrative Guide Procedure 304-11 states that when an enforcement action such as a frisk (level 3 encounter) is concluded, and does not result in a summons or arrest, a member of the service must provide a business card to members of the public, in accordance with the Right to Know Act (Board Review 19). It is undisputed that \$87(2)(b) did not obtain a business card at the conclusion of his encounter with PO Brennan, PO Saline, and Sgt. Duran. The video evidence obtains shows that by the time PO Saline offered \$87(2)(b) a business card, \$87(2)(b) had already began walking away from the three officers. Though \$87(2)(b) did not explicitly refuse the business card, he did not provide PO Saline, PO Brennan, or Sgt. Duran the opportunity to provide their business cards. §87(2)(9) Civilian and Officer CCRB Histories This is the first CCRB complaint to which \$87(2)(6) has been a party (Board Review Sgt. Duran has been a member of service for twelve and has been a subject in five CCRB complaints and fourteen allegations, none of which were substantiated (Board Review 14). Sgt. PO Saline has been a member of service for six years and has been a subject in eleven CCRB complaints and thirty-eight allegations, of which nine were substantiated. § 87(2)(g)

202002202 involved five substantiated allegations against PO Saline (Abuse of Authority: Failure to Provide RTKA card,) (Abuse of Authority: Frisk,) (Abuse of Authority: Refusal to Provide Shield Number,) (Abuse of Authority: Refusal to Provide Shield Number,) (Abuse of Authority: Stop.) The Board recommended Charges (Board Review 14).

 2020003354 involved three substantiated allegations against PO Saline, (Abuse of Authority: Failed to Obtain Language Interpretation,) (Abuse of Authority: Failure to

Provide RTKA Card,) (**Abuse of Authority: Failure to Provide RTKA Card**.) The Board Recommended Command Discipline B (Board Review 14).

- PO Brennan has been a member of service for four year and has been a subject in six CCRB complaints and twenty-nine allegations, of which one was substantiated.:
 - o 202002279 involved substantiated allegations of Abuse of Authority against PO Brennan. The Board recommended Formalized Training (Board Review 14).

Mediation, Civil, and Criminal Histories

- The CCRB did not offer mediation at the time of this complaint.
- As of June 15, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 15).
 \$37(2)(5):\$\$36(1)(3)(4):\$37(2)(5)

Squad:#4			
Investigator:	Sara Asselman Signature	Inv. Sara Asselman Print Title & Name	12/30/2022 Date
Squad Leader:	Raquel Velasquez Signature	IM Raquel Velasquez Print Title & Name	12/30/2022 Date
Reviewer:	Signature	Print Title & Name	- Date